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Jean Sauniere

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EXAMINER

SELLS, JAMES D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN SAUNIERE

Appeal 2009-004478
Application 10/517,526
Technology Center 1700

Decided: October 20, 2009

Before EDWARD C. KIMLIN, CHARLES F. WARREN, and
TERRY J. OWENS, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 42-62 and 83-89.
Claim 42 is illustrative:

42. A method for making an article comprising at least one piece of sheet-form melamine foam having a thickness which is sufficiently small to exhibit flexibility and no flexural elasticity, comprising the steps of:
tangentially cutting into an exterior surface of a melamine foam block with a blade having a cutting edge aligned tangentially to said exterior surface so as to peel a strip of melamine foam from said melamine foam block, said strip having a thickness which is sufficiently small to exhibit flexibility and no flexural elasticity;
deriving at least one piece of sheet-form melamine foam from said strip; and
forming an article from said at least one piece of sheet-form melamine foam, said article having a total thickness.

The Examiner relies upon the following references as evidence of obviousness:

Klemm	4,191,743	Mar. 4, 1980
Desmarais	6,209,430 B1	Apr. 3, 2001

Appellant's claimed invention is directed to a method for making an article comprising a piece of sheet-form melamine foam having a thickness that enables it to exhibit flexibility and no flexural elasticity. The method entails tangentially cutting into an exterior surface of the melamine foam block with a blade whose cutting edge is aligned tangentially to the exterior surface of the block.

Appealed claims 42-62 and 83-89 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Klemm in view of Desmarais.

Appellants submit that all the appealed claims stand or fall together (App. Br. 3, last sentence).

We have thoroughly reviewed each of Appellant's arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of §103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection.

There is no dispute that Klemm, like Appellant, discloses a sheet-form melamine foam having a thickness which is sufficiently small to exhibit flexibility and no flexural elasticity. In particular, Klemm teaches that a preferred foam comprises a melamine-formaldehyde resin having a thickness preferably between 0.5 and 7 mm (*see* col. 4, ll. 8-18). We note that claim 42, with which all the appealed claims stand or fall, does not recite a thickness for the melamine sheet, but claim 44 recites that the thickness is less than or equal to 1 mm.

Klemm does not teach that the melamine sheet is formed by tangentially cutting into an exterior surface of a melamine foam block. However, Appellant does not refute the Examiner's factual finding that Desmarais evidences that it was known in the art to form thin sheets of polymeric foam materials by tangentially cutting into the exterior surface of a foam block. The reference expressly teaches that the described method is "primarily in relation to the cutting of webs of polymeric foam material" (col. 4, ll. 16-17).

Accordingly, based on the combined teachings of Klemm and Desmarais, we are convinced that the Examiner has drawn the proper legal conclusion that it would have been obvious for one of ordinary skill in the

art to employ the tangential cutting method of Desmarais to form a thin sheet of polymeric foam, in general, and a thin, melamine foam sheet of the type disclosed by Klemm, in particular.

Appellant maintains that known methods for preparing melamine foam are aqueous foaming methods and that “[t]hrough these aqueous foaming methods, it was not possible to obtain a layer of melamine foam with a thickness sufficiently small to exhibit flexibility and no flexural elasticity” (App. Br. 4, penultimate para.). Citing the present specification and US patent 4,666,948, Appellants submits that “due to the known great fragility and the brittle nature of melamine foams, there was no method for cutting a block of melamine foam into continuous thin strips” (App. Br. 4, last para.).

It is well settled that counsel’s arguments in the Brief are no substitute for objective evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Also, conclusory statements in the specification without supporting evidence are entitled to little probative value. *In re DeBlauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); *In re Wood*, 582 F.2d 638, 642 (CCPA 1978); *In re Greenfield*, 571 F.2d 1185, 1188 (CCPA 1978); *In re Lindner*, 457 F.2d 506, 508 (CCPA 1972). Consequently, while Appellant contends that “prior to the claimed invention, one of ordinary skill in the art did not know how to obtain a strip or sheet of melamine foam having a thickness sufficiently small to exhibit flexibility and no flexural elasticity” (App. Br. 5, first para.), Appellant has cited no objective evidence to support such an assertion which, in fact, is counter to the evidence presented by the Examiner. To wit, Klemm expressly discloses forming thin sheets of melamine foam having a thickness between 0.5 and 10 mm, and Desmarais specifically teaches

forming thin strips, 0.8 mm in thickness, of polymeric foam by tangentially cutting into the exterior surface of a foam block. Although Appellant's Specification states that "[a] melamine foam which is suitable as a starting material according to the invention includes the one produced by the method described by US patent 4,666,948" (sentence bridging 6-7), the Specification fails to cite any disclosure in the patent that melamine foams can not be cut into sheets in the manner disclosed by Desmarais and presently claimed.

In summation, since Appellant has proffered no objective evidence which establishes that one of ordinary skill in the art would have been dissuaded from employing the cutting method of Desmarais on a melamine foam block, the prima facie case of obviousness established by the Examiner stands unrebutted.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

tc

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